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# Income Tax Guideline —

## Income Taxation of Nonresident Aliens 2002 Tax Year

### Introduction

This guideline applies to individuals who are nonresident aliens for United States income tax purposes. A nonresident alien who works, conducts a business, or owns income-producing property in the State of North Dakota may be subject to North Dakota's individual income tax laws.

**Treaties between the United States and foreign countries.** Except where an income tax treaty between the United States and a foreign country specifically exempts income from state taxation, income tax treaties between the United States and foreign countries do not apply for North Dakota income tax purposes. Therefore, income exempted from U.S. income tax under those treaties may be taxable under North Dakota income tax law. For this reason, a nonresident alien may have to pay North Dakota income tax on income derived from North Dakota sources even though the income is exempt from U.S. income tax because of a treaty.

### Who must file

A nonresident alien must file a North Dakota individual income tax return (and pay the North Dakota income tax computed on it) if he or she derives any **gross income from North Dakota sources**.

**Gross income from North Dakota sources** means (1) wages, salaries, tips, commissions, fees, and other compensation for personal or professional services performed in North Dakota, (2) rents, oil royalties, gains, and other income from tangible property located in North Dakota, (3) income from a business carried on in North Dakota including interest, dividends, and gain from the sale of intangible assets received by the business that are allocable and apportionable to North Dakota, (4) income from gambling activity carried on in North Dakota, and (5) any other income having a source in North Dakota. Except where the income is allocable or apportionable to North Dakota by a business, gross income from North Dakota sources does not include interest, dividends, pensions, annuities, or gain from the sale of intangible property.

### Which form to use

There are two methods of computing a North Dakota individual income tax. A nonresident alien may use either method. Form ND-1 (Main Method) is generally recommended. An optional method is provided on Form ND-2. The tax liabilities on Form ND-1 and Form ND-2 will be different. Use the form on which the lowest tax is calculated.

### How to complete the return

The following steps explain how to complete Form ND-1 or Form ND-2 for a nonresident alien:  
[Note: These instructions apply only to the 2002 tax year.]

**Step 1: Complete a 2002 U.S. Form 1040NR or U.S. Form 1040NR-EZ for North Dakota income tax purposes.** Some of the information needed to complete a North Dakota individual income tax return is taken from the United States individual income tax return which, in the case of a nonresident alien, is either U.S. Form 1040NR or U.S. Form 1040NR-EZ. Obtain a 2002 U.S. Form 1040NR or U.S. Form 1040NR-EZ from the United States Internal Revenue Service and complete it according to the instructions provided with it; **however, unless a foreign income tax treaty specifically exempts part or all of your income from state taxation, disregard any instruction which allows an exclusion of income under a treaty.** Write "Pro forma return for ND purposes" at the top of the U.S. return completed for North Dakota income tax purposes.

**Note:** In some cases, a nonresident alien is not required to file a U.S. individual income tax return even though the nonresident alien received income from sources in the United States. Regardless of whether or not there is a requirement to file a U.S. individual income tax return, a U.S. Form 1040NR or U.S. Form 1040NR-EZ must be completed for North Dakota income tax purposes.

**Step 2: Complete the 2002 North Dakota individual income tax return.** The instructions for completing the North Dakota return depend on which form you choose to use—see **Which form to use** on page 1.

- **If using Form ND-1 (the main method), do the following:**
  1. Complete the top portion of page 1 of Form ND-1 (through line D) as explained on page 8 of the instruction booklet.
  2. Complete lines E and 1 as follows:
    - Line E** Enter the amount from line 34, U.S. Form 1040NR (or line 10, U.S. Form 1040NR-EZ).
    - Line 1** Enter the amount from line 39, U.S. Form 1040NR (or line 14, U.S. Form 1040NR-EZ).
  3. Complete lines 2 through 13 as explained starting on page 9 of the instruction booklet.
  4. To calculate the amount of tax to enter on line 14, complete Schedule ND-1NR. *(Ignore the references to Federal Form 1040, 1040A, etc., shown on Schedule ND-1NR. Instead, enter the amounts from Form 1040NR or Form 1040NR-EZ on the applicable lines of Schedule ND-1NR. Enter any scholarship and fellowship grant income or exclusion on line 8 or 14, respectively, of Schedule ND-1NR.)*
  5. Complete the remaining lines on Form ND-1 as instructed on the form or in the instruction booklet.
- **If using Form ND-2 (the optional method), do the following:**
  1. Complete the top portion of page 1 of Form ND-2 (section above the Tax Computation Schedule) as explained on page 7 of the instruction booklet.
  2. Complete Schedule 3 as follows:
    - a. First, complete Part 2 on page 2 of Schedule 3. *(Ignore the references to Federal Form 1040, 1040A, etc., shown on Schedule 3. Instead, enter the amounts from Form 1040NR or Form 1040NR-EZ on the applicable lines of Part 2. Enter any scholarship and fellowship grant income or exclusion on line 8 or 14, respectively, of Part 2.)*
    - b. Next, complete Part 1 on page 1 of Schedule 3. For lines 11, 17, 18, 20, 22, and 24, ignore the instructions on the form and in the instruction booklet, and complete these lines as follows:
      - Line 11** Enter the amount from U.S. Form 1040NR, line 51 **plus** line 52 **plus** taxes on distributions only included on line 54 **plus** Section 72(m)(5) excess benefits tax and Form 4970 tax and recapture taxes included on line 57 **minus** line 41 **minus** line 61. Or enter the amount from U.S. Form 1040NR-EZ, line 15. **Note: The amount that you enter on this line is limited to the amount of U.S. income tax that you actually paid to the IRS.**
      - Line 17** Enter the amount from U.S. Form 1040NR, Schedule A, line 17. If you used U.S. Form 1040NR-EZ, enter -0-.
      - Line 18** Enter -0-.
      - Line 20** Enter the amount from U.S. Form 1040NR, Schedule A, line 3. If you used U.S. Form 1040NR-EZ, enter -0-.
      - Line 22** Enter -0-.
      - Line 24** Enter the amount from U.S. Form 1040NR, line 38 (or from U.S. Form 1040NR-EZ, line 13.)
  3. Complete the Tax Computation Schedule on page 1 of Form ND-2 as instructed on the form or in the instruction booklet.

### When and where to file

A 2002 North Dakota individual income tax return generally must be filed on or before April 15, 2003. However, if you are required to file a 2002 Federal Form 1040NR and it isn't due until June 15, 2003, you have until June 15, 2003, to file your North Dakota return (without penalty or interest). Mail the return to: Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, North Dakota 58505-0550. If you need additional time to file the North Dakota individual income tax return, contact the Office of State Tax Commissioner for information on obtaining an extension.

### Where to get forms and assistance

Between 8:00 a.m. and 5:00 p.m. (Central Standard Time), Monday through Friday (except holidays), you may call (701) 328-3450 or (toll-free within North Dakota) 1-800-638-2901. Speech or hearing impaired persons may call us through Relay North Dakota at 1-800-366-6888 (*ask for 1-800-638-2901*).

**Or write to:** Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

**Web site:** You may also obtain forms and guidelines, send messages, and find other information on our Web site. The address is: **[www.ndtaxdepartment.com](http://www.ndtaxdepartment.com)**.